

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

In re:	)	
	)	
UNITED STATES OF	)	
AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	2:20-MJ-00415
LATROI DEVON NEWBINS,	)	
	)	
Defendant.	)	
	)	
-----	)	

BEFORE THE HONORABLE DUSTIN PEAD

June 9, 2020

Initial Appearance/Detention Hearing  
Conducted by Zoom Videoconferencing

**Appearances of Counsel:**

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**Salt Lake City, Utah**

**June 9, 2020**

\* \* \* \* \*

THE COURT: Of course you're welcome to be here, I'm glad that you could join us. Just a couple of reminders. Even though the hearing is being conducted by Zoom, the rules of the Court still apply. So please, no recording, no photography. You're welcome to take whatever notes you would like, but please treat this as you would as if you were in court downtown.

Mr. Newbins, let me explain first why we're conducting the hearing by video and let me advise you of an important right. As you're, of course, aware, we're concerned about the pandemic that's going through the United States and we want to reduce the risk of exposure to you and to others. And for this reason, we have organized this hearing to go forward by Zoom. But it doesn't have to. It's ultimately your decision, Mr. Newbins. You have the right to demand that this hearing be held in person, or you can waive that right and proceed by way of Zoom here today.

Mr. Newbins, what's your preference?

THE DEFENDANT: I waive that right and we can resume right now.

1 THE COURT: Thank you so much, Mr. Newbins.  
2 And as I mentioned, and I'll formally state it here  
3 for the record, there are a number of people on this  
4 call with us. Those of most critical import are your  
00:03:00 5 attorney, Mr. Overson. There are three AUSAs on the  
6 case, Mr. Reeves, Mr. Thorpe, and Mr. Yeates.

7 THE DEFENDANT: Okay.

8 THE COURT: Mr. Newbins, of course, you're  
9 here because I have signed a complaint that alleges  
00:03:12 10 that you have violated federal law. Before we talk  
11 about the substance of the complaint, I would like to  
12 advise you of some very important rights you have.

13 First, you have the right to remain silent.  
14 Any statement you make regarding the allegations in  
00:03:25 15 the complaint can be used against you. And my advice  
16 to you is please don't make any statement until you  
17 have had a chance to thoughtfully talk to an  
18 attorney. And that's the second important right, the  
19 right to be represented in this proceeding. And you  
00:03:39 20 have retained Mr. Overson, is that correct?

21 THE DEFENDANT: That's correct.

22 THE COURT: Of course, he's very welcome to  
23 be here.

24 Mr. Newbins, as I mentioned, this is a  
00:03:49 25 complaint, sort of the first step in a larger

1 process. I need to make sure that you have had an  
2 adequate opportunity to review that complaint and  
3 discuss the charges and the allegations with your  
4 attorney Mr. Overson. Do you believe that you have  
00:04:03 5 had enough time to review it?

6 THE DEFENDANT: Yes.

7 THE COURT: Thank you. Mr. Overson, do you  
8 likewise believe you have had enough time to review  
9 this with your client?

00:04:11 10 MR. OVERSON: I do.

11 THE COURT: Mr. Newbins, I need to make sure  
12 that you understand the nature of the charges, and I  
13 also need to make sure that you understand the  
14 maximum possible penalty.

00:04:22 15 Mr. Yeates, one of the prosecutors on the  
16 case, is going to be describing that maximum possible  
17 penalty as well as the minimum mandatory.

18 Mr. Yeates?

19 MR. YEATES: Your Honor, the maximum penalty  
00:04:33 20 pursuant to 844(i) is a term of imprisonment of  
21 20 years, a fine of \$250,000, and it also carries,  
22 Your Honor, a minimum mandatory of 60 months in  
23 prison.

24 THE COURT: Thank you.

00:04:47 25 Mr. Newbins, did you understand that?

1 THE DEFENDANT: Yes, I did.

2 THE COURT: Thank you. As I mentioned, this  
3 is an appearance on the complaint and it's the first  
4 step in a larger process. Where we go from here  
00:04:59 5 depends on whether the Government intends to present  
6 the case for an indictment or proposed indictment  
7 before a separate group of citizens called the grand  
8 jury. And if they intend to present that, on what  
9 date they might try to do so. If it cannot be  
00:05:15 10 presented for an indictment, then we have to address  
11 something else.

12 Mr. Yeates, can you address the questions on  
13 whether you intend to present it for indictment?

14 MR. YEATES: Your Honor, it is our sincere  
00:05:26 15 hope that we present the case for consideration of  
16 the grand jury. However, pursuant to the Court's  
17 General Order, grand juries are currently not meeting  
18 to consider possible federal violations and to return  
19 true bills. Accordingly, we will be prepared for a  
00:05:43 20 preliminary hearing, should it come to that point.  
21 Our obvious preference, though, Your Honor, would be  
22 to take that before the grand jury, and we would hope  
23 that the Court is making progress in accommodating  
24 that.

00:05:56 25 THE COURT: Thank you, Mr. Yeates.

1           So Mr. Newbins, what this means is I need to  
2       set the case for one of two sort of paths. The first  
3       one is it could be an initial appearance on an  
4       indictment if an indictment is returned. There is a  
00:06:09 5       practical concern about whether a grand jury can even  
6       be convened due to the pandemic.

7           The other path could be a preliminary  
8       hearing. That's what Mr. Yeates referred to. At  
9       that hearing, I would be making a determination on  
00:06:23 10       whether there is probable cause to hold you on the  
11       charge for further proceedings.

12           Now, the dates for which these must be held  
13       depend very much on whether you're in custody. The  
14       rules prescribe a 14-day limit, absent consent from  
00:06:40 15       you, or good cause found by me. Ms. Sparrow, I would  
16       like to find a date within 14 days for either a  
17       preliminary hearing or an initial appearance on an  
18       indictment. What do we have available from Weber?

19           THE CLERK: I'm sorry. We have -- it's a  
00:07:19 20       little tricky -- I'm sorry. Right now --

21           THE COURT: Go ahead.

22           THE CLERK: -- the only thing would be on  
23       the morning of the 18th. Is that too soon?

24           THE COURT: The morning of the 18th.

00:07:33 25       THE CLERK: Yeah.

1 THE COURT: Mr. Overson, would that work for  
2 you?

3 MR. OVERSON: Um, I'll make that work. Yes.

00:07:43

4 THE COURT: One of the challenges here is if  
5 the grand jury meets on the 17th, could it be turned  
6 around if an indictment is returned by the 18th. But  
7 my proposal is that we stick with that date and then  
8 we adjust if we need to. Would that be okay if we  
9 called you?

00:07:57

10 Mr. Overson, would that be okay with you?

11 MR. OVERSON: Yes, it would.

12 MR. YEATES: Yes, it would.

13 THE COURT: Ms. Sparrow, I'm sorry, what  
14 time was that?

00:08:04

15 THE CLERK: We can do that at 10:00 a.m.

16 THE COURT: 10:00 a.m. on the 18th.

17 THE CLERK: Yes. And it will be telephonic.

18 THE COURT: Telephonic. Mr. Overson, would  
19 you prefer something different? A preliminary  
00:08:17 20 hearing on video.

21 MR. OVERSON: Um, yes, video, please. There  
22 is video and photographic evidence.

23 THE COURT: Got it. So Teri, let's find our  
24 next date that we could do it for Zoom.

00:08:31

25 THE CLERK: Judge, I have to verify with the



1 jail that any time slots that they offered are still  
2 available. Um...

3 THE COURT: Do we have anything that we  
4 could set tentatively for now and then later confirm  
00:08:51 5 it?

6 THE CLERK: We don't because the schedule  
7 they gave me only goes through the 19th. So I don't  
8 have availability at all for that. So, um...

9 THE COURT: Nothing after the -- I'm sorry,  
00:08:59 10 nothing after the 19th then?

11 THE CLERK: Right.

12 THE COURT: Mr. Overson here is what I would  
13 like to propose. Could we come in on the 18th at  
14 10:00 anyway and then --

00:09:11 15 MR. OVERSON: If I might interrupt, I  
16 apologize. Let's set it for the telephonic. That's  
17 fine, we'll submit our exhibits ahead of time and I  
18 would just ask that the Government do the same. If  
19 we can properly mark them, I think all of the parties  
00:09:25 20 can orient themselves so that we know what we're  
21 looking at.

22 THE COURT: Sure. Let's do this. Exhibits  
23 marked and provided to opposing counsel by -- can I  
24 say noon on the 16th?

00:09:35 25 MR. OVERSON: Yes.

1 THE COURT: Great. And then Mr. Overson,  
2 what I will -- what I would like to propose is we  
3 will continue to communicate with Weber and if we can  
4 find a date that for which video could go forward, we  
00:09:48 5 might reach out to you all and suggest something  
6 alternatively if that's okay.

7 THE CLERK: Judge?

8 THE COURT: Yes.

9 THE CLERK: Um, I'm sorry. I just realized  
00:09:58 10 that we could do it on the 17th by video at  
11 11:00 a.m.

12 THE COURT: The only challenge is that's the  
13 day of the grand jury return.

14 THE CLERK: I know.

00:10:10 15 THE COURT: Mr. Overson, should we plan on  
16 the 17th and by then we'll know whether the grand  
17 jury can even meet.

18 MR. OVERSON: Yeah, let's do that. Let's --

19 THE COURT: What about that, if we move it  
00:10:20 20 to the 17th. I think that will be better.

21 MR. YEATES: We'll accommodate that, Your  
22 Honor.

23 THE COURT: And if we need to, because the  
24 grand jury is meeting, we may reach out to you and  
00:10:28 25 ask to go with a hearing at a later date by

1 telephone, if that is the best way. Teri, what time  
2 was that on the 17th?

3 THE CLERK: That would be 11:00 a.m.

4 THE COURT: 11:00 a.m. Okay I'll ask the  
00:11:05 5 parties to share and mark exhibits by 3:00 p.m. on  
6 the 15th. Please provide me those by that date and  
7 time, and then we'll be prepared in the event it is a  
8 preliminary hearing.

9 Mr. Newbins, the final issue I have to  
00:11:24 10 address is custody, whether you should remain in  
11 custody pending the resolution of the case. There is  
12 a number of ways to do this. I'm happy to try to  
13 proceed today, if you would like, or the other option  
14 is to hold it over for another date for your attorney  
00:11:38 15 to collect information or evidence and argument.

16 Mr. Overson, have you had a chance to review  
17 the Government's motion for detention?

18 MR. OVERSON: I have, Your Honor.

19 THE COURT: What's your preference? Would  
00:11:48 20 you like to proceed today?

21 MR. OVERSON: I would like to proceed today,  
22 Your Honor.

23 THE COURT: Terrific.

24 Mr. Yeates, have you been able to share any  
00:11:56 25 of the exhibits or items you would like to present in

1 support of your request with Mr. Overson?

2 MR. YEATES: Your Honor, I sent an e-mail  
3 that had a couple of photographs. Also, Mr. Overson  
4 has seen the photographs that were attached to the  
00:12:11 5 complaint itself as well as to the United States'  
6 motion for detention.

7 However, it is the United States' hope today  
8 to play a video that was put together last night by  
9 law enforcement. It has several different clips  
00:12:26 10 related to the Defendant in this case and I have not  
11 had an opportunity to turn that over to Mr. Overson  
12 so he has not seen that particular video.

13 I would indicate that the video has snippets  
14 from a variety of different sources including  
00:12:41 15 individuals at the protest that turned to a riot, and  
16 that it shows a variety of different angles of the  
17 Defendant's engagement in the arson of the patrol  
18 car.

19 THE COURT: Mr. Overson, what's your  
00:12:55 20 preference here? Do you want to move forward and  
21 adjust as you see it or do you want some time to  
22 review it?

23 MR. OVERSON: Um, you indicated that there  
24 was technology here through this Zoom system that I  
00:13:09 25 could speak with Mr. Newbins.

1 THE COURT: Sure. It's called a brake-out  
2 room. I can send you in there for a few minutes if  
3 you would like.

4 MR. OVERSON: Okay, let's do that.

00:13:18 5 THE COURT: Okay. How much time would you  
6 like? Is 5 to 10 minutes okay?

7 MR. OVERSON: Five minutes is probably  
8 sufficient.

9 THE COURT: Okay. Ms. Sparrow, let's send a  
00:13:26 10 brake-out room to Mr. Newbins and Mr. Overson.  
11 Mr. Newbins in front of you a screen is going to pop  
12 up that says "accept to join this brake-out room".  
13 If you or someone else in that room can click it, you  
14 and Mr. Overson will be put over there and you will  
00:13:38 15 come back automatically in five minutes, okay?

16 THE DEFENDANT: I would just have to knock  
17 on the door to get someone to come in and do it  
18 really fast.

19 THE COURT: I would appreciate that. Thank  
00:13:47 20 you.

21 THE DEFENDANT: All right. Thank you.  
22 Excuse me. Real quick. I need your help real fast.  
23 They want to send us to a brake-out room real fast.

24 THE COURT: Thank you for helping us. I'm  
00:14:04 25 going to send him and his attorney to a separate

1 brake-out room. We're going to send a notice to the  
2 screen right now to join that room. If you could hit  
3 that when it pops up.

00:14:16

4 JAIL STAFF: Okay. I got her. Whoops,  
5 where did it go.

6 THE COURT: Still there?

7 JAIL STAFF: I was. I don't know what  
8 happened. Hold on.

00:14:35

9 THE COURT: Okay. Mr. Overson, did you see  
10 it?

11 MR. OVERSON: I don't know where the  
12 little -- I went over to get the pop up --

13 THE COURT: Okay.

14 JAIL STAFF: And it wasn't there no more.

00:14:47

15 THE COURT: All right.

16 JAIL STAFF: There we are, now I got it.

17 THE COURT: Great. Thank you. All right it  
18 looks like they have joined that room. Everybody  
19 stand by for five minutes and we'll go from there.

00:15:38

20 (Brief pause in proceedings.)

21 THE COURT: Welcome back, everyone. The one  
22 challenge with the brake-out rooms is that it  
23 automatically returns you on mute. I'm going to see  
24 if we can't unmute you, Mr. Newbins, from here. I  
00:20:48 25 don't see the lock. Sorry, Mr. Newbins. Would you

1 be kind enough to ask someone else if they can help  
2 things? There we go, perfect. Terrific.  
3 Mr. Overson, have you had enough time?

4 MR. OVERSON: I have, Your Honor. I  
00:21:02 5 attempted to send Ms. Sparrow as well as Mr. Yeates a  
6 small single exhibit. It is a photo of a text  
7 message from Mr. Newbins's phone. Unfortunately, it  
8 is in a weird format so Mr. Yeates has not seen that  
9 but I'll describe it for the Court. If anybody has  
00:21:26 10 any objections, just let me know.

11 THE COURT: Okay. Let me first start with  
12 the basis for detention altogether. Mr. Overson, in  
13 the Government's motion they cite 3142(f)(1), crime  
14 of violence, and 3142(f)(2), serious risk that the  
00:21:46 15 Defendant will flee.

16 Do you have any argument you want to make  
17 regarding those, whether a detention hearing is even  
18 authorized under the statute?

19 MR. OVERSON: Well, Your Honor, I mean I can  
00:21:59 20 talk to Mr. Newbins's risk of fleeing. I have never  
21 had a problem with that. I have represented  
22 Mr. Newbins in other matters and I have met with him  
23 repeatedly on a civil matter that I have represented  
24 him on over the years and he has always been prompt,  
00:22:16 25 he has always answered my calls, he has always

1 answered messages. I see in the detention report,  
2 the Pretrial Service Report, that, you know, that  
3 there were warrants in the past. There was one  
4 warrant while I represented him and that was the  
00:22:33 5 result of a scheduling error by the Court itself and  
6 we resolved that immediately. He has, you know, he  
7 has lived here a long time. I really don't think  
8 that he is at risk of fleeing.

9 THE COURT: I appreciate that. Thank you  
00:22:47 10 for sharing it.

11 Um, in terms of the authority to even hold  
12 the detention hearing we have to cross the threshold.  
13 The Government has argued competing -- well not  
14 competing but complimentary arguments. One is that a  
00:23:01 15 detention hearing is warranted because interstate  
16 arson is a crime of violence and therefore a  
17 detention hearing can be held.

18 The second argument was that serious risk of  
19 flight. Here is what I would like to propose. In  
00:23:14 20 light of your argument here, maybe we set that  
21 serious risk of flight authority to hold the  
22 detention hearing off to the side and simply address  
23 whether the detention hearing is authorized because  
24 the alleged offense is a crime of violence. Do you  
00:23:29 25 have reason to dispute that claim?



1 MR. OVERSON: Well, the government has  
2 alleged that Mr. Newbins set fire to a police  
3 officer's car after it had been turned over. And --

4 THE COURT: Right.

00:23:44 5 MR. OVERSON: So --

6 THE COURT: So it is a legal question about  
7 whether the charge that he has been faced with is a  
8 crime of violence as defined by federal law for which  
9 a maximum term of imprisonment is 10 years or more.  
00:23:57 10 I'm not sure if you're contesting that it is -- it is  
11 or is not or it isn't a crime of violence.

12 MR. OVERSON: No. As a matter of law, the  
13 arson would be a crime of violence.

14 THE COURT: Okay. Thanks. So with that in  
00:24:09 15 mind, I find that the authority to hold the detention  
16 hearing is triggered and the Government has the  
17 burden of proof and persuasion here. They have to  
18 persuade me to one of two things, Mr. Newbins. That  
19 you either propose a risk of flight by a  
00:24:25 20 preponderance of the evidence, or a danger to the  
21 community by clear and convincing evidence.

22 THE DEFENDANT: Not at all.

23 THE COURT: It's their job to persuade me of  
24 that so I'm going to let them start first.

00:24:37 25 Afterwards, I'm going to turn to your

1 attorney, and then if there is anything you want to  
2 say, I would be happy to hear it, of course.

3 THE DEFENDANT: All right. Thank you.

4 THE COURT: Mr. Yeates, let's start with  
00:24:46 5 you.

6 MR. YEATES: Thank you, Your Honor. It's  
7 important here to start with an understanding that  
8 there is an actual presumption of detention in this  
9 case because of the charge that is filed. And let me  
00:25:00 10 go through that with Your Honor.

11 Um, also for the sake of clarification, Your  
12 Honor, I would indicate that the statutory basis for  
13 the detention hearing is really twofold. One, this  
14 qualifies as a crime of violence under 3156(a)(4).  
00:25:18 15 But also, Your Honor, it is a crime that falls under  
16 the definitions section located in Section  
17 2332b(g)(5)(B). And both of those, Your Honor, are  
18 statutes that are referenced in the detention statute  
19 located at 3142(f)(1).

00:25:43 20 Now, it's that same statute that I just  
21 mentioned, Your Honor, the 2332b subparagraph G,  
22 subparagraph 5, subparagraph big B, that causes the  
23 presumption of detention to apply in this case.

24 And I want to have a mea culpa, Your Honor,  
00:26:05 25 because I failed to mark that box on my motion and I

1       should have. And so if the Court does have my motion  
2       before it, I would indicate that in the section on  
3       rebuttable presumption, I should have marked that box  
4       and that subsequent to that I should have marked the  
00:26:20 5       box related to subsection C, an offense listed under  
6       Section 2332b(g)(5) big B.

7               Now, with that understanding, Your Honor,  
8       that indeed a presumption of detention does apply, we  
9       then ought to turn to the factors. And I would  
00:26:40 10       argue, Your Honor, that the factors in this case  
11       strongly suggest that detention is needed both  
12       because Mr. Newbins presents an unmanageable danger  
13       to the community, and also because he presents an  
14       unmanageable risk of nonappearance.

00:26:58 15               And I would like to start with the nature  
16       and circumstances of the offense. As Your Honor is  
17       well aware, having read the complaint, Mr. Newbins  
18       was involved in a protest that turned into a riot  
19       where a Salt Lake police patrol car was overturned  
00:27:15 20       and subsequently was burned. And the flames were  
21       large and it was a rather scary situation.

22               That arson involved more individuals than  
23       just Mr. Newbins. The Court should be aware that  
24       there is one other defendant that is similarly  
00:27:32 25       charged and we anticipate bringing charges against as

1 many as three additional individuals as we are  
2 attempting to identify them who were involved in the  
3 arson of the patrol car.

4 In order to give the Court a better  
00:27:46 5 understanding of both the nature and circumstance of  
6 the offense, but also the amount of evidence in this  
7 case, I think it would be helpful at this time to  
8 play a video. And it is about a minute 20 seconds,  
9 Your Honor, and it is a -- it has various clips  
00:28:03 10 involving Mr. Newbins's role in the arson. And my  
11 colleague, Mr. Reeves, has that video available on  
12 his I-Pad. And so I would ask the Court to allow him  
13 to present his desktop and to play that video for all  
14 that are on the call and at the hearing.

00:28:25 15 THE COURT: Mr. Overson, I know you haven't  
16 had a chance to see this. Do you object?

17 MR. OVERSON: That was the purpose of our  
18 discussion off the record with Mr. Newbins and  
19 myself, and we have determined that we would like to  
00:28:36 20 see the video today presented.

21 THE COURT: Very good. Mr. Reeves, we have  
22 shared the screen with you or you have the ability to  
23 share your screen, I should say. Go ahead.

24 MR. REEVES: Thank you. As I play, please  
00:28:50 25 confirm that the audio is also --

1 THE COURT: For the record, I'm seeing  
2 Mr. Reeves's screen. Pulled up the video clip.

3 MR. REEVES: Is the video clip now  
4 presented, Your Honor?

00:29:29 5 THE COURT: Yes.

6 MR. REEVES: Okay. I'll begin.

7 (Whereupon, the video clip was played.)

8 MR. REEVES: That is the conclusion of the  
9 minute and 12 seconds.

00:30:26 10 THE COURT: Thank you, Mr. Reeves.

11 MR. YEATES: Your Honor, this is Mr. Yeates.  
12 Um, the video played a little bit choppy, but I think  
13 the Court can see what we're dealing with here and  
14 that is very high level video, very clear to show  
00:30:44 15 Mr. Newbins. Also clearly shows him throwing a  
16 banner onto a small fire.

17 THE COURT: Mr. Reeves, can you mute that?  
18 Thank you. Sorry, Mr. Yeates. Go ahead.

19 MR. YEATES: The reason I think that's  
00:31:09 20 important, Your Honor, is twofold. One, under the  
21 nature and circumstance of the offense, but also on  
22 the weight of the evidence. From a weight  
23 perspective which is discussed in Section 3142(g)(2),  
24 the weight is very heavy in this case. We have video  
00:31:27 25 evidence from multiple sources showing Mr. Newbins

1 participating in the arson and throwing what acted as  
2 kindling onto that fire in order to increase the size  
3 of the fire which eventually overtook the patrol car  
4 and burned it all the way to the rims. The tires  
00:31:46 5 actually burnt off, Your Honor.

6 Now also looking through the Pretrial  
7 Services Report, I think it's important to note for  
8 sake of the Defendant's risk of nonappearance that he  
9 has significant contact outside of Utah. In fact, he  
00:32:04 10 has moved all over the country during his life. He  
11 has many siblings that live all over the country.  
12 And I'll just mention some of those states where he  
13 has significant ties. California, Nevada, Colorado,  
14 Texas, New Mexico, Ohio, Washington, and Hawaii.

00:32:24 15 It's unusual for defendants in this district  
16 to have those type of contacts outside of the  
17 District of Utah. Looking at those contacts outside  
18 of the District of Utah, coupled together with his  
19 history of failures to appear, I think that he  
00:32:39 20 presents a non-manageable risk of nonappearance.

21 I understand the arguments of counsel  
22 related to nonappearance, specifically that there --  
23 one of those nonappearance in state court was a  
24 mistake. But it is worth noting, Your Honor, that  
00:32:57 25 this Defendant, Mr. Newbins, has actually been

1 convicted of failure to appear and that was related  
2 to a Midvale Justice Court case where he was charged  
3 with failure to appear and was convicted of failure  
4 to appear.

00:33:12 5 Let me turn for a moment, if I might, to  
6 Mr. Newbins criminal history. And I would note, Your  
7 Honor, it has gone back approximately 12 years. For  
8 12 years he has had a number of run-ins with the law  
9 here in the State of Utah and it has varied. For  
00:33:30 10 instance, he has been charged with and convicted of  
11 disorderly conduct, possession of a controlled  
12 substance, criminal mischief, driving under the  
13 influence, failure to appear, false information to a  
14 law enforcement officer, interference with an  
00:33:46 15 arresting officer. And he has also, Your Honor, been  
16 charged with a rather, if I might say, heinous  
17 domestic violence situation where it is alleged that  
18 he used a cloth belt around a female victim to  
19 strangle her and where she couldn't breathe and  
00:34:06 20 nearly passed out.

21 Looking at this criminal history, Your  
22 Honor, I believe there is two things to take from  
23 that. Number one is that he has a long history of it  
24 and it has been unceasing. It has been continual and  
00:34:19 25 it has been frequent. But number two is that through

1 that criminal history he has had myriad failures to  
2 comply. And those failures to comply and failures to  
3 appear are indicative of someone who is a flight  
4 risk, someone who is not a manageable risk of  
00:34:37 5 nonappearance.

6 Your Honor, it also bears mention that I  
7 have spoken with the Salt Lake City Police Department  
8 who is the victim in this case and they have  
9 indicated their recommendation that Mr. Newbins be  
00:34:53 10 detained pending trial. As I look at the criminal  
11 history score here, Your Honor, I see a Category 4.  
12 And what I would suggest, Your Honor, is that is due  
13 in part to the fact that Mr. Newbins is relatively  
14 young. But based on his criminal behavior, he is  
00:35:10 15 well on his way to having a Category 5.

16 With that in mind, Your Honor, I would argue  
17 and ask the Court to find that Mr. Newbins is both an  
18 unmanageable risk of nonappearance, and an  
19 unmanageable danger to the community and I would ask  
00:35:30 20 the Court to detain him pending trial.

21 THE COURT: Mr. Yeates, could I ask you a  
22 couple of questions, please?

23 MR. YEATES: Absolutely.

24 THE COURT: Your complaint cites the  
00:35:41 25 discovery of Mr. Newbins from his participation in a



1 peaceful protest downtown on June 1st, right?

2 MR. YEATES: That's correct.

3 THE COURT: The complaint also cites an  
4 article from the news that says, quote, "Defendant  
00:36:00 5 negotiated a peaceful exit for the group without mass  
6 arrests."

7 How do you balance the conduct, the alleged  
8 conduct, from May 30th with what appears to be a key  
9 de-escalating role on June 1st, just a couple of days  
00:36:16 10 later?

11 MR. YEATES: Your Honor, the United States  
12 does not prosecute individuals based upon their  
13 character but based upon their behavior. And here,  
14 while there may be some behavior that Mr. Newbins has  
00:36:34 15 displayed that is praiseworthy, that, Your Honor, is  
16 -- pales in comparison, if I might, to the idea that  
17 he worked in order to burn a law enforcement vehicle  
18 to the ground.

19 As the Court may have seen through the  
00:36:49 20 video, albeit choppy, the protestors, turned rioters,  
21 moved away from that vehicle for fear it was going to  
22 explode. And certainly that was a possibility here.  
23 When we're dealing with gas tanks and vehicles on  
24 fire, explosions absolutely are possible. And so he  
00:37:08 25 put himself in danger, he put other protestors and

1 rioters in danger. He also put other first  
2 responders in danger.

3 I might also mention, Your Honor, something  
4 that perhaps Mr. Overson will bring up as well, that  
00:37:21 5 there is video that shows Mr. Newbins prior to  
6 putting kindling on the fire, putting out another  
7 small fire in the patrol car. And so there was --  
8 there were small flames and there is video showing  
9 Mr. Newbins pouring perhaps two or three bottles of  
00:37:42 10 water to put that fire out.

11 And so what we do have is some  
12 inconsistencies. Why one moment would Mr. Newbins  
13 try to put the fire out using water, and then moments  
14 later attempt to increase the heat and the flame by  
00:38:00 15 putting kindling on it. And it's difficult to answer  
16 this, but perhaps, Your Honor, Mr. Newbins was  
17 overtaken by the emotion that was overtaking many  
18 individuals at the protest that turned this protest  
19 into a riot.

00:38:17 20 And so I do not contest that Mr. Newbins has  
21 done good things in his life. Nor do I contest that  
22 he peacefully resolved a later protest. But what I  
23 would argue, Your Honor, is that with a criminal  
24 history that dates back 12 years with consistent and  
00:38:36 25 involves acts of violence, including running from

1 police on foot, this is an individual that simply  
2 isn't a good choice for release in this particular  
3 case.

4 THE COURT: Referring back to June 1st, and  
00:38:55 5 I don't mean to suggest that I want to step outside  
6 of my role, I certainly don't, it is your  
7 responsibility and weighty obligation to determine  
8 how and when to charge individuals. The only  
9 question I had was about dangerousness. If the  
00:39:11 10 belief is that Mr. Newbins was dangerous on May 30th,  
11 it seems like presented with similar circumstances he  
12 chose a different path on June 1st. Though I  
13 wondered if the conduct on June 1st suggests that  
14 perhaps he is not as dangerous as you might argue and  
00:39:27 15 that he may have been, as you said, caught up more in  
16 the bad moment of June 30th and instead embraced the  
17 good moment on June 1st.

18 Is there anything else that you want to add  
19 on that contrast?

00:41:04 20 MR. YEATES: Going back to the criminal  
21 history, we see a history of violence, Your Honor.  
22 We see criminal mischief which is, of course, the  
23 damage of property. We see the interference with a  
24 law enforcement officer where the defendant, a  
00:41:22 25 passenger in a motor vehicle, fled on foot and then

1 once apprehended gave false personal identifying  
2 information. And then we see the domestic violence  
3 charge that was eventually dismissed because the  
4 victim was unaccessible or inaccessible. But the  
00:41:40 5 facts that were alleged in the charging document are  
6 grave indeed.

7 When we look at those facts and then we see  
8 the video that clearly shows Mr. Newbins throwing  
9 kindling onto the fire, this is an individual with a  
00:41:57 10 history of violence and that cannot be made up for by  
11 one good act at a protest the day after the arson.

12 THE COURT: Maybe you have already addressed  
13 this point but I didn't see anything that suggests  
14 that he started it. He, I guess, literally added  
00:42:12 15 fuel to the fire if I understand your allegations,  
16 but he didn't -- he wasn't the one that started it.  
17 Am I wrong there?

18 MR. YEATES: You are correct.

19 THE COURT: Okay. Let me ask you about his  
00:42:23 20 residence in Utah. As you correct -- I think you  
21 correctly state, the Pretrial Service Report reflects  
22 connections in many places. My understanding of the  
23 report though is that he has been in Utah for the  
24 past year or so at least. That's with his common law  
00:42:42 25 wife. I believe she is the one that maybe the

1       purported victim from the 2017 matter. He also has a  
2       sister that resides here. It seems to me that he  
3       didn't come in from out-of-state. Is that a fair  
4       reading of the report from your point of view? Has  
00:42:57 5       he been residing here for a while as far as you can  
6       tell?

7               MR. YEATES: Yes. Looking at his criminal  
8       history, rap sheet as we often call it, it does  
9       appear that Mr. Newbins has lived in Utah for quite  
00:43:10 10       some time and that his criminal history tends to  
11       indicate that he has been here in Utah at least since  
12       age 18.

13              THE COURT: So the risk of flight is  
14       probably more, if I understand your argument, about  
00:43:22 15       his failures to appear or comply than it is that he  
16       would flee the district. Have I put words in your  
17       mouth?

18              MR. YEATES: You have not put words in my  
19       mouth but I have not adequately argued our position.  
00:43:35 20       And that is, Your Honor, that Mr. Newbins now faced  
21       with a five-year minimum mandatory that is punishable  
22       by up to 20 years in prison, has a significant reason  
23       and incentive to flee. And the reason I think it is  
24       important to look at his many connections outside of  
00:43:53 25       the District of Utah is that those are areas where he

1       could seek refuge should he seek to flee.

2               And I would also argue, Your Honor, that  
3       based on his failures to appear in state court and in  
4       misdemeanor proceedings, those are with relatively  
00:44:12 5       low stakes. But this is a very high stakes case  
6       where if convicted, the district court judge will be  
7       required to impose no less than 60 months in prison.  
8       That is a significant incentive. And so his  
9       connections outside of the District of Utah should be  
00:44:29 10       of concern to the Court, they're certainly of concern  
11       to the United States.

12               THE COURT: Thank you, Mr. Yeates.

13               Mr. Overson, I want to turn to you and  
14       Mr. Newbins now. But before I do this, um, I have  
00:44:40 15       been following Mr. Yeates citations of the statutes  
16       regarding the rebuttable presumption. As I have  
17       looked at it, as he described it, I believe that he  
18       is correct that there is a presumption that  
19       Mr. Newbins should be detained. That triggers a  
00:44:57 20       burden of production, but it does trigger something.  
21       I know that you may be at a little bit of a  
22       disadvantage because the motion didn't cite that they  
23       believed that there was a presumption of detention  
24       but frankly as I followed him walking through it, I  
00:45:12 25       think it is triggered. Do you -- were you able to

1 follow that with us?

2 MR. OVERSON: Yes, Your Honor, I think it is  
3 also triggered. I think he is correct.

4 THE COURT: Okay.

00:45:21 5 MR. OVERSON: Um, and in terms of the burden  
6 of production, I am -- I have, as I mentioned, a  
7 photo of text messages that I can describe for the  
8 Court, if there is not an objection from the  
9 Government, or, you know, I would otherwise have to  
00:45:44 10 convert the format.

11 THE COURT: Is it on your desktop, the same  
12 location where you're appearing by Zoom?

13 MR. OVERSON: Yes. Yes.

14 THE COURT: This -- you had indicated that  
00:45:54 15 this was your first time on Zoom, right?

16 MR. OVERSON: It is.

17 THE COURT: We have something called share  
18 screen. Do you see at the bottom of the Zoom  
19 software in front of you, on the screen in front of  
00:46:06 20 you on Zoom it says "share screen".

21 MR. OVERSON: Yes.

22 THE COURT: If you hit that, it should give  
23 you all of the screens that are open and allow you to  
24 pop-up the screen that you're referring to. It is --  
00:46:18 25 is the text message in a photo or something on your

1 desktop right now?

2 MR. OVERSON: Yes. I have taken a picture  
3 of Mr. --

00:46:26

4 THE COURT: Is it open and available on one  
5 of your screens?

6 MR. OVERSON: It is.

00:46:38

7 THE COURT: If you don't mind, why don't we  
8 ask you to hit "share screen", it will pop-up all  
9 your windows and maybe we can do it that way. Why  
10 don't we give it a shot.

11 MR. OVERSON: Okay.

12 THE COURT: We're putting you on the  
13 technological hot seat here.

00:46:53

14 MR. OVERSON: Bear with me. I tend to run a  
15 lot of windows open, sir.

16 THE COURT: Yeah. That can be a challenge.  
17 So you just have to find it. But it did open all of  
18 the windows, right?

19 MR. OVERSON: Yes, but I don't see that one.

00:47:07

20 THE COURT: If your -- the photo you want to  
21 show us has to be open and in some application.

22 MR. OVERSON: It is. It actually is, Your  
23 Honor.

24 THE COURT: Okay.

00:47:19

25 MR. OVERSON: There is -- under the advanced



1 settings there is an option for, it looks like,  
2 sharing a portion of screen.

3 THE COURT: Okay.

00:47:32

4 MR. OVERSON: I'm going to try that and see  
5 if that works.

6 THE COURT: Let's try this one more minute  
7 and then if it doesn't work, I'll just have you  
8 describe it.

00:47:41

9 MR. OVERSON: Okay, that's not working.  
10 Okay. Okay, there is some settings here that --  
11 okay. There we go.

12 THE COURT: Great. Perfect.

13 MR. OVERSON: Okay.

14 THE COURT: Great.

00:48:24

15 MR. OVERSON: Do you see that?

16 THE COURT: Describe that. Sure.

00:48:38

17 MR. OVERSON: Yeah. So this is a text  
18 message link or a chain between Mr. Newbins. This is  
19 a photo I have taken with my phone of Mr. Newbins's  
20 phone. The conversation, as you can see, is DJ  
21 Shaquille his brother. So this is effectively his  
22 common law wife's brother, so essentially his  
23 brother-in-law. And the text message takes place  
24 after the situation with the police car downtown. As  
00:48:59 25 is fairly obvious because the brother-in-law has sent

1 him a copy of the -- the YouTube from one of the  
2 channel -- one of the news channels as indicated  
3 early on in the photo.

4 And then the brother-in-law says, "You put  
00:49:17 5 the fire out my menja" and he says, "Yeah, I had a  
6 roll of wet paper that I threw into the fire, but it  
7 was too late. It was already burning hell up." So  
8 this is before -- this is before, you know, he knew  
9 he was under investigation and, you know, he's just  
00:49:40 10 describing this to his brother-in-law saying yeah,  
11 it's unfortunate I couldn't put it out. And that I  
12 spoke to other witnesses -- how do I get back?

13 THE COURT: You would hit "end share screen"  
14 at the top, it might show something, right at the top  
00:49:55 15 of your desktop. There you go. Thank you,  
16 Mr. Overson.

17 MR. OVERSON: Okay. And I appreciate  
18 everybody being patient with me on this.

19 THE COURT: No problem.

00:50:03 20 MR. OVERSON: Okay. So I spoke with other  
21 witnesses who have indicated they saw Mr. Newbins put  
22 out the first fire and attempt to put out the second  
23 fire. He didn't start the fire. They had several  
24 bottles of water and they wetted -- he wetted down  
00:50:28 25 this roll of paper and was trying to smother the fire

1 out but it was simply too hot. And I understand why  
2 the Government thinks what they think, but as the  
3 Court has pointed out, Mr. Newbins's behavior after  
4 the fire, at subsequent peaceful protests, was  
00:50:52 5 commendable, just, you know, de-escalating a  
6 situation that frankly could have been quite  
7 dangerous for citizens and police officers on June  
8 1st, being an individual seeking peace. And I  
9 haven't had an opportunity to really delve deep in  
00:51:13 10 his phone and I'm in the process -- I'll be turning  
11 the phone over to the Government, probably later  
12 today, it depends on when they get the warrant, but I  
13 have perused a couple of the other text message  
14 chains and in it I see Mr. Newbins communicating with  
00:51:34 15 other people who were there to demonstrate as they're  
16 on their way or -- and his message to them is let's  
17 keep this civil, you know, we don't want a bunch of  
18 shenanigans, we don't want to damage because that  
19 takes away from the message. So that's the  
00:51:51 20 individual we're dealing with.

21 In terms of his risk of flight --

22 THE COURT: Could I interrupt you there?

23 MR. OVERSON: Yes.

24 THE COURT: Obviously this is the first that  
00:52:02 25 I have heard that the proffer is that it was a bunch

1 of wet like wrapped up wet paper towels or banner or  
2 something.

3 MR. OVERSON: Right.

4 THE COURT: Do you have any proffer that you  
00:52:14 5 can give me on where he got it, how it was wet, how  
6 he drenched it, any of that sort of stuff?

7 MR. OVERSON: Well, I don't know where he  
8 pulled the paper from, but in the vehicle, in his  
9 vehicle, they had brought water because it was a hot  
00:52:30 10 day. And that's the water that he used to douse the  
11 paper in an effort to make it a dampening. So  
12 whether --

13 THE COURT: How close was his car to where  
14 the arson took place?

00:52:43 15 MR. OVERSON: That I don't know.

16 THE DEFENDANT: I was in the middle of the  
17 intersection.

18 THE COURT: So by Mr. Newbins?

19 THE DEFENDANT: Yes, I was right in the  
00:52:53 20 middle of the intersection where I could plainly see  
21 everything. In between both of the -- the tracks,  
22 right in the middle of the road.

23 THE COURT: Got it. Thank you. So the  
24 proffer is, if I understand it, Mr. Overson, that it  
00:53:08 25 was water -- or a water soaked banner or something

1 with the intent to put a fire out consistent with an  
2 earlier statement I think conceded by the government  
3 that he had tried to put the fire out with water  
4 bottles. Whether it was fruitless or not, I guess,  
00:53:25 5 is apart from the issue of whether he was trying to  
6 add kindling or taking away the strength of the fire.  
7 Is that your proffer?

8 MR. OVERSON: It is, Your Honor. He was  
9 successful in putting out the first fire. The only  
00:53:36 10 reason he wasn't successful this time is that the  
11 fire had grown to such an extent that it was simply  
12 too hot for him to be close enough to douse it.

13 THE COURT: One of the challenges that I  
14 face in a detention hearing is determining the weight  
00:53:50 15 of the evidence. Obviously, I have seen the picture,  
16 I've seen the audio -- or the video now but I  
17 probably would need to go back and look at that and  
18 see if there is any indicia of whether it was dry or  
19 wet. Did you see anything in the video?

00:54:02 20 MR. OVERSON: You know, I don't think you  
21 can tell by watching the video.

22 THE DEFENDANT: You can't. You can't.

23 THE COURT: Are there witnesses and things  
24 that you would present in support of the claim that  
00:54:10 25 it was wet and it was doused?

1 MR. OVERSON: Yes. We have several  
2 witnesses that have told me through a third-party, I  
3 haven't interviewed them yet, so --

00:54:24

4 THE COURT: So that's where we are angling  
5 on the preliminary hearing then?

6 MR. OVERSON: Yes.

7 THE COURT: I see. Go on. I'm sorry, I  
8 interrupted you about the risk of flight.

00:54:33

9 MR. OVERSON: You are free to interrupt me  
10 any time, Your Honor.

00:54:48

11 On the risk of flight, as I said I have  
12 represented Mr. Newbins for an extended period of  
13 time. I'm sitting here looking at the dockets from  
14 the state court matters. You know, the Government  
15 referred to this assault and that the Government  
16 wasn't able to go forward and it got dismissed. I --  
17 I don't know what bearing this particular example  
18 would have. The case was dismissed, it was dismissed  
19 without prejudice, so the government had -- the state  
20 had an opportunity to put its case together and  
21 proceed. It chose not to. Um, the case was closed  
22 in July of 2017 and the docket indicates that the  
23 victim was present and left. So I --

00:55:04

00:55:22

24 THE COURT: What do you mean was present and  
25 left. Unable to locate victim witness is what it

1       says.

2                   MR. OVERSON: I'm looking at the docket from  
3       7/3 maybe we're -- I'm looking at a case number  
4       ending 1904.

00:55:36

5                   THE COURT: Right. I'm looking at the  
6       Pretrial Services Report and maybe you're looking at  
7       the docket.

00:55:46

8                   MR. OVERSON: I'm looking at the docket and  
9       I'll quote, "State not ready to proceed, comma,  
10      victim left, period. State's motion for dismissal of  
11      case Court grants without prejudice."

00:56:00

12                  THE COURT: So it could be this. It could  
13      be that they're saying the same things. The Pretrial  
14      Services Report says unable to locate victim or  
15      witness. I think the premise here is witness  
16      unavailability, right?

00:56:14

17                  MR. OVERSON: Right. But I do think it  
18      speaks something to the weakness of that case to  
19      begin with that the victim actually showed up,  
20      interacted with the prosecutor, and left.

21                  THE COURT: Okay. I see what you're saying.

00:56:33

22                  MR. OVERSON: Um, I look at the rest of his  
23      criminal history and we're looking about -- we're  
24      talking about, you know, fairly low level stuff. The  
25      only other felony charge and I don't have that screen

1 up right now, I believe it was a possession of  
2 marijuana, um, and then the rest of it is, you know,  
3 a DUI, driving without an interlock, no insurance,  
4 pretty low level justice court stuff.

00:57:02 5 Um, we did have him on another case that was  
6 a felony and it got dismissed outright for, you know,  
7 evidentiary reasons. And the others were involved  
8 and Mr. Newbins wasn't involved in the criminality  
9 aspects of that.

00:57:17 10 So, um, I really don't think that he is a  
11 flight risk. And even -- even if there is some risk,  
12 and there is always some risk, even if he is a level  
13 one there is a risk of failure to appear. Pretrial  
14 monitors people all of the time by ankle monitor.

00:57:38 15 And, you know, he is not a man of great means. He is  
16 not going to go buy a ticket to Mexico and hide out  
17 to avoid these charges. He has got reasons to be in  
18 this -- in this city. He has got children at home.  
19 His wife called me on a regular basis. I could hear  
00:57:56 20 them screaming in the background. She is about to

21 pull her hair out trying to take care of young  
22 children. Um, and frankly, 30, he is old enough --

23 THE COURT: I saw that.

24 MR. OVERSON: You know and he is the primary  
00:58:13 25 caregiver at least to one of them and I base that on



1 my own observations of him and his family. He is the  
2 one that is able to control the one child that is  
3 kind of hyperactive, frankly.

4 THE DEFENDANT: The two year old.

00:58:28 5 THE COURT: When you say primary caregiver,  
6 one of the concerns I have about the Pretrial Service  
7 Report is this unanswered void between claims of  
8 disability from 2016.

9 MR. OVERSON: Right.

00:58:38 10 THE COURT: And an absence of any disability  
11 finding and no -- not working.

12 MR. OVERSON: Right.

13 THE COURT: That concerns me. It also  
14 concerns me about whether he should return to this  
00:58:47 15 home in light of the allegations from 2017. I'm also  
16 a little concerned about mental health condition and  
17 drug use, right.

18 MR. OVERSON: Yes. And you know what, all  
19 of those are valid concerns, Your Honor, and I would  
00:59:03 20 like to address them.

21 THE COURT: Okay.

22 MR. OVERSON: So first of all the  
23 disability. He is -- he just started the process.  
24 He is not very far in the process for applying for  
00:59:13 25 disability. And he had an appointment with Valley

1 Mental Health to address the mental health issues.

2 THE COURT: When was that?

3 MR. OVERSON: What's that?

4 THE COURT: When is that?

00:59:25 5 MR. OVERSON: Um, I don't recall the date  
6 but the arrest interfered with the appointment  
7 itself.

8 THE COURT: It was set before June -- before  
9 May 30th?

00:59:35 10 MR. OVERSON: Yes.

11 THE COURT: Okay.

12 MR. OVERSON: And, Your Honor, the concern,  
13 and I think that the mental health issue is -- stems  
14 from his physical health issues. I represent him on  
00:59:46 15 a personal injury claim. He was in a pretty severe  
16 car accident and has pretty substantial injury to  
17 most of his spinal column. And since that accident,  
18 he has been involved in multiple accidents and it has  
19 aggravated the condition along the way.

01:00:05 20 So I don't know. My experience with back  
21 injuries, Your Honor, when they're chronic like this,  
22 is they go hand-in-hand with mental health issues.

23 THE COURT: How does disability -- I guess  
24 it is not obvious to me what the -- you mentioned it  
01:02:57 25 is a spinal issue. I have only seem him from

1 appearing here in court and then also from the video,  
2 and I don't mean to suggest that I'm any expert, but  
3 what is the disability that prevents employment then?

4 MR. OVERSON: It is -- well it is twofold.

01:03:13 5 The mental health aspects of it but I think that is  
6 the lesser aspect of it.

7 THE DEFENDANT: Can I say something, Your  
8 Honor?

9 THE COURT: Sure. Do you mind if we just  
01:03:22 10 wait until I hear from Mr. Overson? Thanks,  
11 Mr. Newbins.

12 MR. OVERSON: So the spinal issue, Your  
13 Honor. He has got multiple bulged disks. Um,  
14 independent medical examiner has looked at him and  
01:03:37 15 found that the injuries are there, um, and that's  
16 both cervical throughout his -- throughout his back.

17 THE COURT: The accident -- the accident --  
18 maybe there were many accidents, but what was -- when  
19 was the last accident that gave rise or the serious  
01:03:54 20 accident that gave rise to the physical disability.

21 MR. OVERSON: Latroi, help me on the date.

22 THE DEFENDANT: The last accident I can  
23 remember was last year, September, had to be in  
24 September like. September? No. I don't want to get  
01:04:11 25 it wrong.

1 THE COURT: But it was last year you say.

2 MR. OVERSON: The last accident.

3 THE COURT: Now my concern is that you  
4 haven't been employed since 2016 so --

01:04:20 5 THE DEFENDANT: Correct.

6 THE COURT: So when -- I don't mean to put  
7 you on the spot, but just generally when do you  
8 believe that you became sufficiently disabled that  
9 you couldn't work?

01:04:29 10 THE DEFENDANT: After the second accident.  
11 I can't recall the date, but when I lost my job after  
12 the first initial accident on August 6th of 2016, my  
13 job said I couldn't return unless I was able to fully  
14 do my job. And due to the fact that my back was  
01:04:47 15 messed up, I couldn't lift more than 50 pounds, I  
16 couldn't stand no longer than an hour to two hours,  
17 and I couldn't sit no longer than 30 minutes. So  
18 because I couldn't -- because I couldn't do nothing,  
19 they did not want me to work no more. I couldn't  
01:05:02 20 even keep my job.

21 THE COURT: And I don't, again, I don't mean  
22 to ask any --

23 THE DEFENDANT: That is all right.

24 THE COURT: Why did you not pursue any  
01:05:09 25 disability claims then?

1 THE DEFENDANT: At that time I was -- I was  
2 going through the -- I was going through the claim  
3 with Darwin trying to get the settlement together.  
4 And I was -- I did try to -- I did try to get another  
01:05:21 5 job, I did actually, it was at Bimbo Bakeries. But  
6 the job required me to stand on my feet for more than  
7 14 hours. And I -- and you can look it up as well.  
8 I worked there for almost like a month and then I had  
9 -- I couldn't work no more after that because I  
01:05:37 10 couldn't be on my feet no more.

11 THE COURT: Do you believe that there are  
12 places where you could work right now?

13 THE DEFENDANT: Um, yes, call centers. My  
14 dad has talked about me going back to school.

01:05:48 15 THE COURT: So again, I hope you don't mind  
16 me asking the questions, but if you could work at  
17 other places why haven't you?

18 THE DEFENDANT: To be honest, too, I have  
19 been with the kids. I have three boys at home with  
01:06:01 20 my wife. I'm always there with them. I'm -- I'm a  
21 father first and then due to the injuries and stuff I  
22 didn't really think I should have work. And my wife  
23 never really argued with me about it and I always,  
24 like I said, I'm always home. I'm always with my  
01:06:20 25 kids.

1 THE COURT: Is your wife working or was your  
2 wife working?

3 THE DEFENDANT: No, she is on disability as  
4 well. She receives disability as well. So she  
01:06:28 5 doesn't work neither and --

6 THE COURT: Okay.

7 THE DEFENDANT: -- I'm home with them all of  
8 the time.

9 THE COURT: Got it. Thanks for clarifying  
01:06:34 10 that. Sorry, Mr. Overson, I interrupted you again.  
11 Go ahead.

12 MR. OVERSON: No, you're fine, Your Honor.  
13 Um, and I just want to point out that the accident  
14 that caused the vast majority, or the original  
01:06:48 15 injury, if you would, what stems from August of 2016,  
16 so it's a fairly longstanding situation. And, you  
17 know, his condition varies. I think like with any  
18 back injury, you know, you are out there doing -- you  
19 think you're doing well, you're working in the garden  
01:07:06 20 and then you're unable to really do too much for the  
21 next two weeks.

22 THE COURT: Some of the concerns here,  
23 Mr. Overson, are, you know, I have seen a few of  
24 these reports in my time, it looks like he is  
01:07:17 25 self-medicating here too with marijuana. He hasn't

1       obtained a medical marijuana use card. I'm a little  
2       concerned, for instance, the false information, the  
3       flight from law enforcement, the continued to drive  
4       on suspended license. As you say not overly  
01:07:32 5       consequential by themselves, but it gives rise to an  
6       inference that he is unwilling to keep the rules. He  
7       struggles to comply especially from history from  
8       longer ago, how can I be convinced that he would  
9       comply with conditions now?

01:07:47 10               THE DEFENDANT: Your Honor --

11               MR. OVERSON: Well, I think if you put in  
12       place through pretrial random UAs, Mr. Newbins would  
13       comply with that. He has not had access to medical  
14       insurance during the vast majority of the last four  
02:09:12 15       years and -- and he has -- I mean he will tell you  
16       honestly that, you know, he has used marijuana to  
17       medicate. A lot of people do. Unfortunately that is  
18       the situation. I think he would qualify for a  
19       medical card, but he doesn't have that. And so  
02:09:30 20       you're right, um, you know, he has been engaging in  
21       illegal activity in that sense. But we're not  
22       talking about holding him in detention because he has  
23       smoked marijuana. We're -- the Government is asking  
24       you to hold him in detention because he committed  
02:09:47 25       arson and there is good reason to believe that

1 Mr. Newbins was trying to prevent an arson, prevent  
2 damage to property. So I --

3 THE COURT: I think that that is the  
4 evidence that you are going to be collecting for the  
02:10:01 5 preliminary hearing that it wasn't a contribution to  
6 the fire but rather it was an attempt, whether no  
7 faith, you know, whether successful or not it was an  
8 attempt to put it out not add to it, I think. That's  
9 the million dollar question in your mind.

02:10:16 10 MR. OVERSON: Yes. And in terms of, you  
11 know, his compliance, um, you know, I think if he is  
12 on pretrial he is going to -- he is going to follow  
13 the rules. My other --

14 THE COURT: He does have that failure to  
02:10:30 15 appear. I mean he has a conviction, it is a  
16 citation. I think what is that, a Class C maybe.

17 MR. OVERSON: \$50. It is a \$50 fine out of  
18 the Midvale Justice Court.

19 THE COURT: No, I understand that the  
02:10:41 20 seriousness of it doesn't, you know, doesn't warrant  
21 any drastic action, but when you see things like  
22 driving on suspended license, failure to obey,  
23 failure to appear, those all contribute to a belief  
24 that he struggles to comply with conditions.

02:10:56 25 MR. OVERSON: Right.



1 THE COURT: And then when he -- when he  
2 flees on foot and then gives false information when  
3 officers approach him, do you think those are fair  
4 considerations on whether he would keep conditions  
02:11:08 5 now?

6 MR. OVERSON: I think they are. Um, but  
7 most of those experiences are quite dated. Um, as I  
8 have said, my experience with him is that he is  
9 prompt, um, he is on top of things, he answers the  
02:11:19 10 calls, he responds to messages, and he shows up in  
11 court when I tell him he has got court.

12 In fact, in fact, he usually is the one  
13 calling me confirming whether or not we have a court  
14 date. So that's my recent experience with him. And  
02:11:33 15 as I said, I have been representing him now for, you  
16 know, somewhere around three years.

17 THE COURT: Thanks, Mr. Overson.

18 Mr. Newbins, you have been really patient as  
19 we have -- as I have talked to the attorneys. I just  
02:11:46 20 want to remind you, you don't have to say anything  
21 today. If you would like to, I am happy to hear from  
22 you, I'm here to listen. So go ahead.

23 THE DEFENDANT: Thank you. I definitely  
24 want to speak for myself as well, too. Darwin has  
02:12:11 25 always been there on my side every time I have been

1 in some legal issues. I have always complied. I  
2 have never went back on my word. One thing that I  
3 live by that I always followed from a long time  
4 teaching from my father, you're a man of your word.  
02:12:26 5 You can't keep your word, then what do we have.

6 And over the past history, yes, I have I had  
7 some violence. I had some things that weren't right.  
8 But as -- I am 28 years old. I got four -- I got  
9 four siblings that look up to me, all boys, three  
02:12:43 10 that stay home with me. I am with them all the time.  
11 They know who I am, they see me, and I am a family  
12 orientated. Yes, I have done some wrong, but I'm  
13 making up for everything that I have done. And as I  
14 am getting older, I'm not trying to do nothing else  
02:13:02 15 but do the right thing. Yes, like I said, I've done  
16 some bad things in my past. I can't go back and  
17 change nothing I done. But right now, what I'm  
18 doing, I'm doing what I'm supposed to be doing. I've  
19 been staying out of trouble. Yes, I had violations  
02:13:19 20 driving because I still need -- I need to still get  
21 around and take care of my family. So yes, I have  
22 violated that. Yes, I confess to that. But I have  
23 -- I have good cause. If anybody was in my situation  
24 what would they have done? I still got to get  
02:13:36 25 around. I try to make ways to make room to do things

1 that I'm supposed to do. And yes, I still -- I still  
2 slip and fall every day. But I'm always trying to  
3 stay up on my seat. I'm not trying to sit here and  
4 do stuff that ain't supposed to be right, I don't  
02:13:50 5 want to sit here. Um, sorry, I'm -- I'm so nervous  
6 because this is my first time ever facing a federal  
7 charge in my life. And it's -- it's bothering me.  
8 I'm sorry.

9 THE COURT: Take your time, it's fine.  
02:14:07 10 There is no rush, I want to hear from you.

11 THE DEFENDANT: Okay. I'm not trying to  
12 cause no damage. I'm not trying to be a menace to  
13 society. I done that when I was younger. I'm a  
14 model citizen. I'm sorry.

02:14:35 15 THE COURT: That's okay.

16 THE DEFENDANT: All -- all I'm trying to do  
17 is raise my kids the right way. I got four that look  
18 up to me. I'm their hero. The last thing I want  
19 them to see me do is anything wrong.

02:15:07 20 I got a wife that respects everything I do.  
21 She has always been in my corner. She has always  
22 told me if you don't listen to me something bad is  
23 going to happen. She even told me not to go. But I  
24 woke up that morning and I felt like I had to go. It  
02:15:25 25 was for a cause, it was -- and it was for justice. I

1       wasn't going down there to cause no damage. And I --  
2       and if I had a bullhorn that Saturday, I would have  
3       been protesting them to not do anything. But it was  
4       circumstances that happened down there. I wish -- I  
02:15:43 5       wish they was showing videos of me when I was trying  
6       to put the fire out versus when I'm running up to the  
7       car trying to throw something into it. And that's  
8       not my character.

9               THE COURT: How soon after the fire was lit  
02:15:57 10       did you show up with water bottles?

11              THE DEFENDANT: The first one or the second  
12       fire?

13              THE COURT: I guess the first one. So the  
14       first with one went out?

02:16:05 15              THE DEFENDANT: Yes. We had -- I had  
16       protestors on the side behind the barricades throwing  
17       water bottles to us so we could put it out. I even  
18       yelled at the people that threw fireworks or whatever  
19       else they was throwing in the car to not do that when  
02:16:19 20       they were tearing it and vandalizing that. But they  
21       don't got none of that on video at all. They just  
22       got that one clip on the news when she finally showed  
23       up, she didn't see nothing that we did until that  
24       fire was getting started. And that's -- that's all  
02:16:33 25       we're going based on right now is what I did when I

1 ran up to the car was I making it worse or was I  
2 trying to prevent it. I tried to prevent it the  
3 first time. Then I seen them doing it again and I  
4 ran to my own car and grabbed that out and had a  
02:16:48 5 little bit of water and wet it all on that paper to  
6 try to smother it out. But by the time I got to the  
7 car, those flames are already too big and I already  
8 knew my attempt to try to put it out the second time  
9 was not going to work.

02:17:13 10 So I left. And I stayed right there and  
11 watched it. I even had my two year old son with me,  
12 and my best friend with me, and she asked me did you  
13 put it out? I said no, it's hell-a-burning and we  
14 left. That's when I watched everybody started  
02:17:30 15 leaving from the library and they started marching up  
16 to the capitol. So I didn't even stay down there  
17 after the fire in the police car got started and I  
18 left and I followed everybody. I was wondering where  
19 everybody was going and they was marching to the  
02:17:45 20 capitol. So that is what I'm saying, I wasn't down  
21 there trying to vandalize anything. That was not the  
22 purpose of me going down there that day.

23 And the part that I can't stress about, I  
24 woke up that morning, like I said, and something  
02:17:59 25 called me to go down there. And I -- I'm a true

1 believer in God and I felt like I was supposed to be  
2 down there. So I went, against my wife's judgment,  
3 against my family's judgment, I said no, I said I'm  
4 going to go down there and protest as well. And  
02:18:14 5 that's what I did. But I wasn't down there trying to  
6 be incriminating myself or anything.

7 For God's sake, if I was going to do any of  
8 that I would have worn a mask like the rest of them.  
9 I would have had my face covered up too if I wanted  
02:18:27 10 to vandalize and destroy property. I was down there  
11 bold face. My face was all over the scene. A lot of  
12 people were down there with me.

13 THE COURT: Yes.

14 MR. OVERSON: Your Honor, I just would like  
02:18:39 15 to add a piece here, just for clarification, and then  
16 it may be causing some confusion for Your Honor. Is  
17 the fire was started, the second fire, was started by  
18 the use of some kind of an accelerant. There is  
19 video that shows the other individual that has been  
02:19:00 20 charged, or at least I assume that is who it is.

21 Some individual approached the window of the cop car  
22 and it looks like to me, I am interpreting it as a  
23 gas can, and he pours what I assume is gasoline or  
24 some type of an accelerant inside of the vehicle.

02:19:21 25 And that's -- so that's the type of fire that

1 Mr. Newbins is trying to put out. And as you can  
2 imagine, um, that fire probably got hot pretty quick.  
3 It was approachable enough for him to get close to  
4 try, but, um, he just couldn't -- he just couldn't  
02:19:40 5 hold the wire.

6 THE COURT: Thanks to you both. I  
7 appreciate your sharing your insight. Mr. Yeates,  
8 let me just go back to you. Would you like to reply  
9 to any of that?

02:19:50 10 MR. YEATES: Yes, Your Honor. And at the  
11 risk of trying this before Your Honor during a  
12 detention hearing, there are several points that need  
13 to be discussed.

14 First of all, Your Honor has seen the  
02:20:02 15 photographs of Mr. Newbins and other rioters standing  
16 on top of the police car. Photographs were taken of  
17 them standing on top of the police car. That  
18 certainly isn't indicative of a protest rather than  
19 riot. That is a clear indicator of riot as opposed  
02:20:23 20 to lawful First Amendment protests. And so the Court  
21 has to consider that fact that indeed he and others  
22 with him were standing on top of the, as I recall,  
23 overturned police car.

24 Also, Your Honor, as we look at the video  
02:20:41 25 and the screen grabs, it's apparent that the paper

1 that he is using is not wet. And if the Court is  
2 interested in seeing some of those screen grabs, we  
3 can show one. But also, Your Honor, it is important  
4 to note that there was water readily available that  
02:20:57 5 can be seen in the video. There is a large what  
6 appears to be five-gallon jug that was right within  
7 Mr. Newbins's reach and he didn't use it. Rather, he  
8 ran to a place where he could get something that  
9 would burn. And I would mention that Mr. Patton, who  
02:21:14 10 is also charged by way of complaint, it appears that  
11 he and Mr. Newbins have a brief conversation. But  
12 the two of them from the fire being started to  
13 Mr. Newbins running and grabbing the poster board and  
14 then running back, is all of about 15 seconds. It  
02:21:32 15 would be amazing if he were able to get a poster  
16 board, roll it up, pour water on top of it, and then  
17 take it to the vehicle. There just simply wasn't  
18 enough time based on the evidence.

19 But more so than that, Your Honor, as the  
02:21:46 20 vehicle was burning, Mr. Newbins took a selfie of  
21 himself kneeling in front of the car as it was  
22 ablaze. That, Your Honor, is not consistent with  
23 someone who attempted to put out the fire. That's  
24 consistent with someone who is enjoying watching a  
02:22:05 25 Salt Lake City patrol car burn. And I can only



1 assume that defense counsel has that, Mr. Overson has  
2 that available. He has the Defendant's phone and if  
3 he has it available, I would love for him to show  
4 that selfie so that the Court can see it. But we do  
02:22:23 5 have video from at least one if not two angles that  
6 clearly show Mr. Newbins taking that selfie with the  
7 burning car in the background.

8 Now if the Court is interested in seeing  
9 either the water bottle or the paper that looks to be  
02:22:39 10 completely dry, Mr. Reeves is prepared to show that  
11 to Your Honor.

12 THE COURT: Mr. Overson, I would like to see  
13 that. Would you, too?

14 MR. OVERSON: Let's see it. And I just for  
02:22:48 15 the record, as I mentioned before about this phone, I  
16 have not gone through -- all I did was just peruse  
17 some of the text messages. I have not done anything.

18 THE COURT: Okay. Let's take a look at  
19 this. While that's happening, to Mr. Newbins,  
02:23:02 20 Mr. Yeates is right it is not my job to determine  
21 guilt or innocence. But one of the challenges with  
22 detention is the weight of the evidence, what weight  
23 do I give the weight of the evidence. That is why  
24 we're spending all this time on this.

02:23:13 25 THE DEFENDANT: I understand.

1 THE COURT: I'm not -- I'm not tasked with  
2 determining guilt. But in my mind, much of the  
3 arguments turn on the weight of the evidence here  
4 today whether you should be detained. So that's why  
02:23:24 5 I want to see this.

6 (Video clip played.)

7 THE DEFENDANT: The car wasn't on fire.

8 THE COURT: I do see, as you have said,  
9 Mr. Newbins, I can't tell if the fire is still on  
02:25:55 10 when you take the picture but --

11 THE DEFENDANT: No. There was no fire at  
12 that moment.

13 THE COURT: I do see -- I do see you and  
14 another individual posing for a selfie with the car.

02:26:03 15 THE DEFENDANT: I know who that person is as  
16 well.

17 MR. OVERSON: No.

18 THE COURT: Okay. So Mr. Yeates, I think  
19 that is what you were referring to. Um, I couldn't  
02:26:09 20 see anything from what he threw into the car. It was  
21 sort of hard for me to identify anything of substance  
22 from that. Is there anything else you can offer on  
23 that?

24 MR. YEATES: Yes, Your Honor. I would ask  
02:26:22 25 Mr. Reeves to show you a still frame from that video.

1 It is a close up and it pretty clearly shows the  
2 rolled up poster board.

3 THE COURT: Okay.

02:26:47

4 MR. YEATES: Your Honor, while Mr. Reeves  
5 works on pulling that up, I have mentioned that in  
6 this video it shows the water that -- that he said he  
7 previously drank from and was available to him to  
8 pour on and he doesn't take advantage of that water  
9 rather he takes advantage of throwing on paper.

02:27:06

10 THE COURT: Okay. There is the still.  
11 Mr. Overson, do you see that?

12 MR. OVERSON: I do.

13 THE COURT: And Mr. Newbins, do you see  
14 that?

02:27:14

15 THE DEFENDANT: Yes. It is blurry.

16 THE COURT: Can you zoom out a little bit,  
17 Mr. Reeves?

02:27:25

18 Okay. So Mr. Overson and Mr. Newbins, I  
19 believe that the Government's argument is that if  
20 that were wet would it remain so, for a lack of  
21 better term there, stiff?

22 THE DEFENDANT: When I poured the water, I  
23 poured it all throughout it on top. So you don't --  
24 you're seeing the end of it, um, not the very top.

02:27:39

25 THE COURT: I see.

1 THE DEFENDANT: And when I got all the way  
2 right there where you see me standing, that is when I  
3 realized the fire was too big and that was not going  
4 to put it out. And that is when I ran because I  
02:27:49 5 already knew this situation was already out of hand  
6 and that is when I ran back to my car.

7 THE COURT: But after throwing it in the  
8 fire all at the same, right?

9 THE DEFENDANT: All at the same time, yes.

02:27:59 10 THE COURT: Okay. Thanks, Mr. Newbins.

11 Mr. Yeates, anything else?

12 MR. YEATES: No, Your Honor. We would  
13 submit it.

14 THE COURT: Mr. Overson, anything else you  
02:28:08 15 want to add?

16 MR. OVERSON: No, Your Honor. We would  
17 submit it.

18 THE COURT: I rarely come across a  
19 circumstance as challenging as this one, balancing  
02:28:18 20 competing interests. And one of the things I have  
21 struggled with, I guess, is the information that has  
22 been provided to here that contrary to at least what  
23 Mr. Newbins's alleges, contrary to what was alleged  
24 by the Government, it was an effort to put out  
02:28:35 25 instead of add to. That's challenging because it is

1 not my task to determine guilt or innocence. It's  
2 also challenging because there are competing  
3 interests at play. I think it's clear to me a couple  
4 of things and I hope you will forgive me while I take  
02:28:56 5 a moment to go through this. I want to talk again  
6 about that contrast between May 30th and June 1st.

7 There isn't a dispute here that I think  
8 there is a contrast in Mr. Newbins's conduct. There  
9 is a dispute about what his conduct is on May 30th,  
02:29:13 10 but there isn't a dispute about the contrast. It's  
11 the conduct on May 30th was sinister. The complaint  
12 references that he used a megaphone appearing to lead  
13 demonstrators. Paragraph 17 of the complaint says  
14 that the Defendant negotiated a peaceful exit for the  
02:29:30 15 group without mass arrests. That's different, of  
16 course, from what the Government alleges took place  
17 on May 30th. And I respect what Mr. Yeates has said  
18 that it's not the Court's job to determine whether  
19 someone should be charged on balance. I am not  
02:29:45 20 suggesting that. But I do think that it goes to  
21 whether Mr. Newbins can engage in conduct that isn't  
22 violent. The June 1st conduct was the antithesis of  
23 what the Government alleges took place on Saturday  
24 May 30th. And I think that is worthy of some weight.  
02:38:24 25 What stands out to me, what's undisputed, he is not

1 an instigator of the flame. The Government alleges  
2 he used existing materials. And I assume existing  
3 materials to contribute, it wasn't planned, for  
4 instance, with flammable liquids. It appears to me  
02:38:42 5 that the inference to draw is he took whatever was  
6 available to him, again if I consider the  
7 Government's view, and added fuel to the fire. He  
8 didn't start it.

9 Now June 1st was nothing like May 30th. I  
02:38:54 10 think not for Salt Lake and frankly not for  
11 Mr. Newbins. I think it is fair to say as we've  
12 talked about, he de-escalated and he was key in doing  
13 that for many others.

14 This isn't just a passing judgment on  
02:39:07 15 whether he should be charged. I'm not suggesting  
16 that at all. It does suggest to me, however, a  
17 willingness to work with and through lawful authority  
18 without violence, or at least we have this contrast  
19 that we need to grapple with in this regard. On  
02:39:23 20 balance, those -- that contrast, I think, is really  
21 key to whether he should be detained. I'm going to  
22 go back to this in just a minute.

23 There are some other concerns that the Court  
24 has. We talked a little bit about employment. He  
02:39:41 25 hasn't worked since 2016. He alleges disability from

1 car accidents. But as far as I can tell, has only  
2 recently pursued disability and instead according to  
3 the report at least relies on others for support.

4 It does appear to me that he could work,  
02:39:59 5 maybe not at jobs that he has historically had, but  
6 even he suggested that he could work. So I am  
7 concerned about his absence of work but I also  
8 appreciate the role that he wants to play as a  
9 father. Many individuals have to play those dual  
02:40:14 10 roles and I wonder whether Mr. Newbins needs to do  
11 that as well recognizing his circumstance may be  
12 different from others.

13 I'm concerned about his mental and physical  
14 health, the depression for anxiety and the diagnosis  
02:40:27 15 for depression and anxiety in 2009 for which  
16 medication was prescribed but he declines to take.  
17 At least the report says he declines to take it. He  
18 doesn't suggest that there was an impediment to  
19 taking it, which is a little bit in contrast to what  
02:40:43 20 we have heard today that the absence of insurance  
21 precludes it.

22 I am very concerned about his ongoing drug  
23 use because that seems to be self-medicating to deal  
24 with issues both physical and mental issues. And  
02:40:56 25 should I draw any inferences from that? Maybe, I

1 don't know how much. It appears to be marijuana.  
2 And even if he qualifies for the medicinal marijuana  
3 certificates or cards, I'm struck that he hasn't  
4 taken advantage of the opportunity to do that in  
02:41:15 5 earnest. At least he finds himself in positions  
6 where he uses without the card. I don't think that  
7 is worthy of too much weight to attach to that, but  
8 it is worthy of something.

9 Residence. I get a little bit more  
02:41:27 10 concerned about this. Only because, Mr. Overson, I'm  
11 alarmed by that allegation from 2017, very alarmed by  
12 it. But you noted two critical things. No  
13 conviction resulted, it was a dismissal without  
14 prejudice so the Government could bring it back. His  
02:41:44 15 common law wife is willing to have him return, but  
16 they have been going through their own struggles.  
17 And I'm not sure it is a great idea for him to return  
18 there. I struggle with his desire to be a dad to the  
19 kids, but at the same time the allegations about what  
02:41:59 20 he did to his common law wife are very concerning.  
21 Strangling her twice, blocking the door so she can't  
22 leave. I don't give that the same weight I do to any  
23 conviction, but it concerns me all the same. I note,  
24 for instance, that he has a sister that resides in  
02:42:15 25 the district. It may be better that he lives



1 somewhere else until we get him assessed at Valley  
2 Mental and do some other things going forward to make  
3 sure that he is not a danger. Can we mitigate that  
4 danger.

02:42:28 5 The failures to appear or meet obligations  
6 as ordered by the Court are very concerning. Many of  
7 these failures are from the distant past. Failure to  
8 appear in 2011, later recalled; failure to appear on  
9 a drug charge, 2011. Reduced from a felony to  
02:42:46 10 misdemeanor. Failures to appear and comply with the  
11 DUI offense, 2011. Failure to appear on a driving  
12 offense, suspended license from 2012 with a guilty  
13 plea to a misdemeanor failure to appear as well.

14 Multiple failures to appear stemming from a false  
02:43:03 15 information interference charge in 2012, accompanied  
16 by a probation violation with credit for time served  
17 in lieu of community service. A failure to appear in  
18 2018 relating to a DUI charge that is later dismissed  
19 and therefore entitled to less weight. A failure to  
02:43:17 20 appear relating to a drug distribution charge

21 involving marijuana likewise later dismissed,  
22 likewise entitled to lesser weight. He has a pending  
23 case for driving on a suspended license right now  
24 with ignition interlock, drug paraphernalia in Orem  
02:43:35 25 south of Salt Lake City from August of last year. No

1 failures to appear in that case.

2 All of these things together, the lack of  
3 work, the failures to appear, all of this gives him a  
4 relatively pretrial risk assessment score, as

02:43:48

5 Mr. Yeates noted, of four. This is a high score for  
6 someone with his history. It shouldn't be that high  
7 and it could have been much lower if he took greater  
8 consciousness and care in meeting his obligations.

9 I appreciate what Mr. Newbins has said about

02:44:05

10 being a man of his word, but the record also shows

11 that he has not always been responsive to Court

12 processes. I think that the risk of flight is

13 manageable. I recognize his ties elsewhere in the

14 community and I'm -- or elsewhere in the country, but

02:44:27

15 I think in light of his children being here, I don't

16 think that it is an unmanageable risk of flight. I

17 think he could, with the right conditions,

18 monitoring, check-ins, and other things, I think that

19 is manageable.

02:44:41

20 The real issue in my mind is, is he a danger

21 to the community. The Court emphasizes the lesser

22 role that I think he played on May 30th. But if the

23 Government's theory is correct, it is dangerous all

24 the same. There is other reasons for danger. The

02:45:02

25 DUI offenses, which I know are misdemeanors, but that

1 likewise poses some risk to the community. I am  
2 concerned about the incident from 2012 when he fled  
3 on foot, gave a false name to officers. In my mind,  
4 Mr. Overson, I think he is manageable but this turns  
02:45:24 5 in the end on the weight of the evidence from May  
6 30th.

7 I frankly am not sure what the truth  
8 actually is regarding whether he intended to add to  
9 or extinguish that flame. I have only done my best  
02:45:43 10 to try to draw inferences here today. The  
11 preliminary hearing will help it flesh out a little  
12 bit better on whether there is probable cause that he  
13 be held for further proceedings. I have struggled  
14 with what to do here. Should I detain him pending  
02:45:57 15 that weight of the evidence determination, or should  
16 I release him because I am not sure what the weight  
17 of the evidence is.

18 At the end of the day, I think he is  
19 manageable, but I am not sure I am comfortable with  
02:46:12 20 him returning to his home where the children are only  
21 because of the 2017 incident.

22 Mr. Overson, do you believe there is another  
23 place that he could stay?

24 MR. OVERSON: Absolutely, Your Honor.

02:46:26 25 THE COURT: Where else could he stay?

1 MR. OVERSON: I believe that his sister  
2 would accept him to live with her. I don't think  
3 that that would be a problem.

02:46:35

4 THE COURT: Here is what I would like to  
5 propose. There are two things I need to consider.  
6 Number one, is there an address that would be  
7 appropriate where he could live at. I don't mean to  
8 suggest that he can't communicate with his common law  
9 wife or with his children, but I'm very concerned  
10 about what I read from 2017. I don't believe they  
11 should be living in the same house.

02:46:49

02:47:02

12 Number two, if during the meanwhile the  
13 parties want to present additional evidence or  
14 information regarding the claims of the defendant,  
15 I'm happy to hear it or we can reserve judgment on  
16 that and wait until we see the preliminary hearing.  
17 It is going to take us some time to examine the  
18 appropriate residence. Would you propose his sister  
19 above all others, Mr. Overson?

02:47:15

20 MR. OVERSON: Um, let me ask Mr. Newbins.

21 THE COURT: Mr. Newbins?

22 MR. OVERSON: Is there -- would your sister  
23 be the best place for you to reside while we're  
24 waiting to get a resolution on this case?

02:47:27

25 THE DEFENDANT: Yes. My sister would not

1 contest that. And if I can't stay with her, I have a  
2 sister-in-law that's not too far down the street from  
3 her, too. It is my wife's sister. I don't --

02:47:40

4 MR. OVERSON: Are you able to provide the  
5 Court with addresses right now?

6 THE DEFENDANT: 29 --

02:47:50

7 THE COURT: You don't need to provide that  
8 right here. Mr. Overson, can you collect that  
9 privately and then share that with Ms. Wollitz who is  
10 on the call with us. I'm going to ask Ms. Wollitz to  
11 do a quick review, as quickly as she can do, and if  
12 it is -- if it's an acceptable residence, I intend to  
13 release him with conditions by the 11th.

02:48:10

14 Now, if it's not, we will reach out to you  
15 and try to get another hearing if we can before the  
16 17th to address that. Mr. Newbins, this has been a  
17 very close call in my opinion. I'm going to list  
18 some is conditions that I think you need -- I am  
19 going to order that you must comply with.

02:48:25

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you fail to comply with the  
22 conditions, then you may run-- well, I won't just say  
23 you may, you run a very serious risk of a warrant and  
24 a return to custody. Okay?

02:48:37

25 THE DEFENDANT: I understand.

1 THE COURT: So here is the conditions.

2 Assuming we can find an appropriate residence, you  
3 must maintain or actively seek verifiable employment  
4 and/or maintain or commence an educational program as  
02:48:50 5 approved by the pretrial officer. I recognize you  
6 may be pursuing disability, that's fine, you're free  
7 to do so. But unless and until that is established,  
8 I expect more. I expect you looking for a job or to  
9 get back in school.

02:49:04 10 You will maintain a residence and not change  
11 that residence without prior permission from the  
12 pretrial officer. This is going to be the suitable  
13 residence that we find so I don't have that right now  
14 but hopefully we'll find one.

02:49:18 15 I want you to report on a regular basis to  
16 the pretrial officers as directed. You will not  
17 possess a firearm, ammunition, destructive device or  
18 other dangerous weapon. You will not use or  
19 unlawfully possess a narcotic drug or other  
02:49:34 20 controlled substance as defined by federal law unless  
21 prescribed by a licensed medical practitioner.  
22 Prescriptions have to be reported to the pretrial  
23 officer.

24 Now, I know that states have conditions on  
02:49:45 25 marijuana use, but the federal law doesn't allow for

1       that.

2                   THE DEFENDANT:   Okay.

3                   THE COURT:   So you are going to have to make  
4       some serious changes here.  You're going to have to  
02:49:52 5       submit yourself to drug testing as directed by the  
6       officer.  If testing reveals illegal drug use, I want  
7       to be notified immediately.  If you miss a drug test,  
8       I want to be notified immediately.  I want you to  
9       participate in drug treatment as deemed advisable by  
02:50:09 10      the pretrial officer.

11                  I am going to order you to participate in  
12       inpatient or outpatient substance abuse therapy and  
13       counseling if deemed advisable by the pretrial  
14       officer with you paying all or part of the cost of  
02:50:23 15       the program based upon your ability to pay.  That  
16       also relates to the drug testing.  You have to pay  
17       all or part as based on your ability to pay.  You  
18       will undergo a mental health evaluation and complete  
19       any recommended treatment as directed by the pretrial  
02:50:37 20      officer and take any mental health medications as  
21       prescribed.  Again, you must pay all or part of the  
22       cost of the program based upon your ability to pay.

23                  I'm going to place you on something called  
24       home detention for now, Mr. Newbins, and this is  
02:50:53 25       because I frankly don't know what the evidence shows

1 as yet on June 1st. I'm sorry, on May 30th. You are  
2 going to be restricted to that residence except for  
3 employment, education, religious services, medical,  
4 substance abuse, mental health treatment, attorney  
02:51:08 5 visits, court appearances, court ordered obligations  
6 and other activities pre-approved by the pretrial  
7 officer.

8 The goal here is not to prevent your ability  
9 to spend time with your kids. To the contrary. But  
02:51:21 10 the goal is to avoid putting you in a position where  
11 you could find yourself in trouble down the road.  
12 Home detention could be modified down the road if  
13 necessary, but for now that's what I'm going to  
14 order.

02:51:31 15 THE DEFENDANT: Okay.

16 THE COURT: I'm going to order that you  
17 submit your person, your residence, your office, or  
18 vehicle to a search conducted by a pretrial officer  
19 at a reasonable time and in a reasonable manner based  
02:51:41 20 upon reasonable suspicion of contraband or evidence  
21 of a violation of condition of release. Failure to  
22 submit to the search may be grounds for revocation.  
23 And you need to warn the residents, wherever you  
24 reside, that the home can be subject to search under  
02:51:55 25 certain conditions.



1 THE DEFENDANT: I understand.

2 THE COURT: Mr. Newbins, this seems like a  
3 lot and it is.

4 THE DEFENDANT: It is.

02:51:59 5 THE COURT: And it is because I'm very  
6 concerned about what happened on May 30th. This is  
7 my best effort to try to balance the Government's  
8 interests regarding your conduct versus your interest  
9 in liberty. If you violate these terms, you can  
02:52:15 10 expect that negative factors -- or negative  
11 circumstances will arise. A warrant for your arrest,  
12 being turned over to custody, okay?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Yeates, I know the  
02:52:25 15 Government opposes release, but is there anything  
16 that you would like me to add or consider on  
17 conditions?

18 MR. YEATES: No other additional conditions  
19 that I can think of at this time, Your Honor.

02:52:37 20 THE COURT: Thank you.

21 Mr. Overson, any other thoughts from you?

22 MR. OVERSON: I just want some  
23 clarification, Your Honor. So if he is at his  
24 sister's, are you asking that he be evaluated as part  
02:52:54 25 of the mental health evaluation to determine whether

1 he is a danger to his spouse? I'm just asking for  
2 clarification, it's not an argument.

3 THE COURT: It's not directly related to  
4 that danger although I have concern about his mental  
02:53:13 5 health condition as it poses a risk. So the mental  
6 health eval will help us understand whether he poses  
7 a danger and what medications can be taken, if any,  
8 to mitigate that or whether it is counseling or other  
9 things. Does that make sense?

02:53:27 10 MR. OVERSON: Right. I just wanted to get a  
11 sense of whether I needed to focus the evaluation on  
12 that as well and submit that to the Court.

13 THE COURT: Well, and we're going to  
14 organize that too, Mr. Overson, so our pretrial  
02:53:40 15 officers will help arrange this, okay?

16 MR. OVERSON: Okay. Well, yes. Yeah I  
17 guess that is true. I apologize.

18 THE COURT: So it's not -- it's not at your  
19 direction, it's at ours.

02:53:50 20 MR. OVERSON: Right. Right. Um, okay, that  
21 clarifies it for me. Thank you.

22 THE COURT: Okay any other clarifications or  
23 suggestions?

24 MR. OVERSON: No, Your Honor.

02:53:58 25 THE COURT: Thanks. Mr. Newbins, are you

1 willing to keep all of these conditions?

2 THE DEFENDANT: Yes, sir.

02:54:07

3 THE COURT: We will eventually get you this  
4 form, but I'm going to sign, you're going to sign it  
5 as well indicating that you're willing to keep them  
6 all and appear for all hearings. Okay?

7 THE DEFENDANT: Thank you.

02:54:15

8 THE COURT: This has been a very close call  
9 in my decision. It could be that the Government may  
10 want to appeal it, I don't know. But for now, unless  
11 and until that happens, you need to do very -- you  
12 need to do your very best to keep all of them and do  
13 them well. You're going to be in custody until the  
14 11th. I need a place for you to go that I think is  
15 appropriate first. If there is a problem there,  
16 we'll try to get an emergency hearing even if we have  
17 to do it by phone and discuss the next step. Okay?

02:54:31

18 THE DEFENDANT: Okay. Thank you.

02:54:40

19 THE COURT: Mr. Overson, anything else from  
20 the Defendant?

21 MR. OVERSON: No, Your Honor.

22 THE COURT: Mr. Yeates?

23 THE DEFENDANT: Is it all right if I give  
24 you the address?

02:54:45

25 MR. YEATES: No, Your Honor.

1 THE COURT: Here's what I'm going to do.

2 Teri, would you send Ms. Wollitz, Mr. Newbins, and

3 Mr. Overson to a separate brake-out room so that they

4 can collect those addresses and phone numbers?

02:54:59

5 Meanwhile, thanks everyone. For the rest of you, the

6 hearing is concluded.

7 MR. OVERSON: Thank you, Your Honor.

8 THE DEFENDANT: Thank you, Your Honor.

9 MR. REEVES: Thank you, Your Honor.

02:55:08

10 THE COURT: My pleasure. Thank you.

11 THE CLERK: Teri we have people in the

12 waiting room for the 2:30 probably, right?

13 (Whereupon, the hearing concluded.)

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**REPORTER'S CERTIFICATION**

I hereby certify that the foregoing transcript was taken from a Zoom video recording stenographically to the best of my ability to hear and understand said video recording, that my said stenographic notes were thereafter transcribed into typewriting at my direction.

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Laura W. Robinson